

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-090973

09/09/2015

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
I. Ostrander
Deputy

LAWN & ORDER LEASING INC, et al.

DARYL R WILSON

v.

STEVEN PAYNE, et al.

JARED C SIMMONS

UNDER ADVISEMENT RULING

The bench trial arose from the sale of a landscaping business. Plaintiffs brought a claim on a Note for the balance due for nonpayment of the Note. One counterclaim for conversion and several affirmative defenses were also presented at trial.

The Note arose from a Business Asset Purchase Agreement in the amount of \$130,000.00. The buyers put down \$50,000.00 and the sellers carried the \$80,000.00 balance due per the Note.

The buyers made no payments on the Note for various reasons buyers assert as offsets to the entire Note.

The Purchase Agreement allocates the purchase price to a number of categories. The weight of the credible evidence supports the Plaintiffs' position regarding the categories of inventory (\$5,000.00), covenants not to compete (\$15,000.00), goodwill (\$30,000.00), and customer base (\$30,000.00).

As to the category equipment and fixtures, the Plaintiffs did not transfer certain vehicles and trailers with clear title or titles as promised per the Purchase Agreement or as promised thereafter. The Defendants are entitled to an offset of \$4,000.00 to the \$40,000.00 allocation for equipment, which leaves a balance due Plaintiffs of \$36,000.00 for that category.

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As to the category business trade name, the Plaintiffs did not properly transfer title to the trade name Lawn and Order of Arizona. Defendants are entitled to a \$10,000.00 offset to the amount due.

The Court finds Plaintiffs have met their burden of proof to establish the total amount due under the Note as \$116,000.00 (\$130,000.00 less offsets of \$14,000.00) less \$50,000.00 (down payment) = \$66,000.00.

As to the State Farm check in the amount of \$1,993.86, Plaintiffs concede they improperly converted this check.

The Court finds in favor of Defendants on the counterclaim for conversion in the amount of \$1,993.86. The remaining checks were disputed and the Court finds in favor of Plaintiffs' position.

Counsel for Plaintiffs shall lodge a form of Judgment, Application for Fees, and Statement of Costs by September 29, 2015. Any Response and Reply shall be filed per the Arizona Rules of Civil Procedure.

FILED: Exhibit Worksheet